Comment to Proposed Professional Conduct Rule Amendments

1 message

John Doyle <doyle.johnh@gmail.com> Tue, Jun 5, 2018 at 2:12 PM
To: lawcourt.clerk@courts.maine.gov

Honorable Justices of the Maine Supreme Judicial Court,

I write today on my own behalf to express concerns regarding not only the proposed addition of Rule 8.4(g), but also the proposed amendment to Rule 5(a)(4). I thank you for the opportunity to share these views.

Amendment of Rule 5(a)(4):

Taking first Rule 5(a)(4), by my reading this amendment would eliminate reciprocal acceptance of continuing legal education (CLE) courses taken to satisfy CLE requirements in other states if the attorney does not maintain a principal office in that other state.

Presently, a Maine attorney with a principal office in Maine, but who is also licensed in another state, may satisfy Maine CLE requirements by complying with requirements of that other state; provided that those requirements meet or exceed those of Maine. By submitting a form and the requisite processing fee, those CLE credits earned in another state are accepted in Maine. For example, a Virginia licensed attorney who practices in Maine could satisfy Virginia's CLE requirement by attending the National Trial Advocacy College, an intense multi-day course presented by faculty from across the country and offered annually at the University of Virginia. After submitting the appropriate paperwork and fees, that attorney would also have satisfied Maine's CLE requirements.

This amendment would suggest that completion of out of state courses such as this would not necessarily result in the award of credit towards Maine's CLE requirement. If compliance with CLE requirements of multiple jurisdictions required taking separate courses, substantially increasing the number of hours and dollars required to complete CLE requirements, Maine attorneys licensed in multiple jurisdictions would suddenly face pressure to re-evaluate multijurisdictional practices or maintaining licensure in multiple states. If there is some problem with the current language, I am unaware of it.

I urge retention of the existing language of Rule 5(a)(4) that allows a Maine attorney with a primary practice location in Maine to satisfy Maine CLE requirements by satisfying equal or more stringent mandatory CLE requirements of another state in which that attorney is licensed.

Proposed Rule 8.4(g):

As regards the proposed addition of Rule 8.4(g), I worry about the unintended consequences of such a rule where a lawyer may be disciplined for "conduct or communication… [a] lawyer… reasonably should know manifests an intention: to [discriminate]…" Certainly nobody wants bigoted lawyers casting the profession in a negative light. However, might the proposed rule cause a chilling effect on legal argument?

We have all witnessed changes over time in the scope of language and ideas considered acceptable and unacceptable. Language that was once common may, at times, now be heard by listeners as manifesting an intent to be discriminatory.

For example, imagine a case in which an Assistant Attorney General serves as defense counsel in litigation in which a biological female plaintiff desires placement in a male prison because the plaintiff identifies as a male. If the AAG referred to the plaintiff as “a woman” in oral argument to be congruent with the argument that a biological female should not reside in the male prison, would that AAG run afoul of this rule? Imagine another case. Would counsel on behalf of a high school be allowed to argue that a biologically male student should not be permitted to utilize the girls’ shower facility at the school, or would an argument against universal access to all facilities be considered discriminatory?

Thank you for your consideration.

John

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